

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(Brookline, Missouri))

MM Docket No. 90-195

RM-7152

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

OPPOSITION TO
PETITION FOR RECONSIDERATION

MW Springmo, Inc. ("MW Springmo")¹, permittee of a new FM Station on Channel 271A, Brookline, Missouri, by counsel, and pursuant to Section 1.49 of the Commission's rules, hereby submits its Opposition to the Petition for Reconsideration, filed May 15, 2001 by Lake Broadcasting, Inc. ("Lake"), which seeks reconsideration of the Allocations Branch's *Memorandum Opinion and Order* ("MO & O"), DA 01-1016 (released April 20, 2001), in the above-captioned proceeding.² In support of this Opposition, the following is stated:³

¹ On January 17, 2000, the *pro forma* assignment of license of BPH-960212MD, Brookline, Missouri, KOSP(FM), Willard, Missouri, and KKLH(FM), Marshfield, Missouri, from KOSP Limited Partnership to MW Springmo was consummated.

² Lake also filed related petitions for reconsideration in MM Docket No. 92-214, MM Docket No. 91-352, and MM Docket No. 89-120.

³ The filing of Lake's Petition for Reconsideration was published in the Federal Register on June 18, 2001, which announced a deadline of July 3, 2001, for filing oppositions. See 66 FR 32816. As indicated in MW Springmo's accompanying "Motion for Leave to Accept Opposition to Petition for Reconsideration," MW Springmo has requested leave to file the instant Opposition beyond the filing deadline.

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Following the denial of certiorari by the U.S. Supreme Court in Lake's appeal of the revocation of its licenses and construction permit,⁴ the Allocations Branch of the Mass Media Bureau dismissed Lake's 1996 Petition for Reconsideration⁵ as "moot." Moreover, the Allocations Branch determined that Lake's arguments against the Brookline allotment were substantially flawed. The Commission's action on this matter is undeniably correct.

First, Lake's Petition does not contest the decision of the Allocations Branch, at Paragraphs 5 - 7 of the *MO & O*, that Lake's arguments against the Brookline allotment were substantially incorrect. As Lake has not challenged the substantive decision, its Reconsideration request cannot lie.

Second, Lake's 1996 Petition, as well as its recent baseless Petition, are both unmistakably "moot." Courts have defined a "moot" case as one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason, cannot have any practical legal effect upon a then existing controversy.⁶

In this case, Lake has presented a pretended controversy and is also seeking a decision in advance of one that is actually asserted and contested. The Supreme Court's denial of certiorari regarding Lake's appeal of its license revocation has ended this matter. Lake, however, attempts

⁴ See *Contemporary Media, Inc., et al., v. FCC*, 214 F. 3d 187 (D.C. Cir. 2000), cert. denied, 532 U.S. --, 2001 U.S. LEXIS 2194 (2001) (licenses revoked after Michael Rice, Lake's sole owner and president, was convicted of the felonies of deviant sexual conduct and sodomy of minors, and Lake made repeated misrepresentations to the FCC as to Rice's continued involvement with their stations).

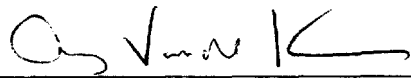
⁵ On January 11, 1996, Lake filed a Petition for Reconsideration of the Report and Order in this proceeding which allotted Channel 271 at Brookline, Missouri, as a first local service. Lake had asserted that the Brookline allotment prejudiced its reconsideration petition in MM Docket No. 89-120 for an upgrade of its Station KBMX(FM) in Eldon, Missouri.

to get new life by saying that it "intends to file with the Commission shortly a request for extension of its operating authority and additional equitable relief, based on compelling and extraordinary equitable circumstances which have not previously been presented to the Commission or considered by it." This issue is irrelevant to the resolution of this proceeding. Even were Lake to obtain more time to operate the station in Eldon, it would be on a temporary basis. There would be no permanent operator to seek the Eldon upgrade, or to contest the Brookline allotment. The simple fact remains that Lake's authorizations have been revoked, and the revocation has become final. There is nothing in the record that shows that its Petition for Reconsideration is anything but "moot."

WHEREFORE, in light of the foregoing, MW Springmo respectfully requests that the Petition for Reconsideration, filed May 15, 2001 by Lake Broadcasting, Inc., be DENIED.

Respectfully submitted,

MW SPRINGMO, INC.

By: 

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⁶ See, e.g., *Burrell v. Martin*, 232 F.2d 33 (D.C. Cir. 1955); see also, *Ex parte Steele*, 162 Fed. 694 (Dist. Ct. N.D. Ala 1908).

CERTIFICATE OF SERVICE

I, Renee Williams, hereby certify that I have on this 9th day of July, 2001, mailed by first class United States mail, postage prepaid, or have caused to be hand-delivered*, copies of the foregoing **“OPPOSITION TO PETITION FOR RECONSIDERATION”** to the following:

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